IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4974 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

RAMESHBHAI D GAMIT - Respondent(s)

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Appearance :

MR ASHISH M DAGLI for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1,
MR SUBRAMANIAM IYER for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 23/08/2005

ORAL JUDGMENT

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner – GSRTC has challenged the legality and validity of the judgment

and award passed by the Labour Court, Surat dated 30th July, 2004 passed in Reference No.181 of 2003 in partly allowing the same and directing the petitioner to reinstate the respondent workman without backwages and further substituting the order of punishment of dismissal imposed by the disciplinary authority to withholding of three increments with permanent future effect.

2. The respondent workman was serving as the Conductor and that while he was on duty on 16th May, 2001, his bus was checked by the checking squad and it was found that the though fare was collected from the five passengers, tickets were not issued to them and on the basis of the aforesaid charge, department inquiry came to be initiated against the him. After holding the charge of not issuing the tickets to five passengers though fare was collected came to be held to be proved, the disciplinary authority passed an order dismissing the respondent workman from service. Being aggrieved and dissatisfied with the order of dismissal passed by the disciplinary authority, the respondent workman raised industrial dispute which

was referred to the Labour Court, Surat for its adjudication being Reference No.181 of 2003. In the said reference, the respondent workman submitted an application / Purshis Exh.20 accepting the legality and validity of the departmental inquiry and keeping the question of findings open, requested to grant benefit under Section-11-A of the Industrial Disputes Act and has submitted that he is ready and willing to forego the backwages. On appreciation of evidence and considering the inquiry papers and even the statement of respondent workman before the disciplinary authority admitting and confessing that the he has not issued tickets to five passengers though the fare was collected till the checking taken taken place, the labour court held that charge of not issuing tickets to five passenger though fare was collected has been established, however, considering the fact that out of 51 passengers, other 46 passengers were issued tickets, the labour court held that there was no bad intention on the part of the respondent workman in not issuing tickets and if checking squad would not have come the respondent workman might have issued tickets to those five

passengers and ultimately considering the said aspect, exercised the powers under Section-11-A of the I.D.Act by substituting the order of punishment imposed by the disciplinary authority from dismissal to withholding of three increments with permanent future effect without backwages. Being aggrieved and dissatisfied with the said judgment and award passed by the Labuor Court, Surat dated 30th July, 2004, the petitioner corporation has preferred the present special civil application under Articles 226 and 227 of the Constitution of India.

3. Shri A.M.Dagali, learned advocate appearing on behalf of the petitioner Corporation has vehemently submitted that having held by the Labuor Court that the allegation of not issuing tickets to the five passengers though the fare was collected, has been proved and established, the labour court was not justified in substituting the order of punishment of dismissal imposed by the disciplinary authority, exercising the powers under Section-11-A of the I.D.Act. He has also further submitted that reasoning given by the Labour Court for exercise of the powers

under Section-11-A of the I.D.Act to the effect that out of 51 passengers, 46 passengers were already issued tickets and if the checking squad would not have come, the respondent conductor might have issued tickets to those five passengers, is perverse and the labour court has not properly considered the fact that the respondent workman himself has admitted before the Inquiry Officer in the disciplinary proceedings that though the fare was collected from said five passengers he has not issued tickets and that has resulted into miscarriage of justice. He has also further submitted that there was no reason for the respondent workman for not issuing tickets to those five passengers the moment the fare was collected and the tickets were not required to be issued subsequently and in fact, the tickets were required to be issued simultaneously on receipt of the fare and therefore, it is submitted that the Labuor Court, Surat was not justified in quashing and setting aside the order of dismissal imposed by the disciplinary authority. He has further submitted that as such, there is no finding given by the Labuor Court o the effect that the punishment imposed by the

disciplinary authority is shockingly disproportionate and / or too harsh and therefore, it is requested to allow the present special civil application.

4. Shri Subramanian Iyer, learned advocate appearing on behalf of the respondent workman while opposing the present special civil application has submitted that when on appreciation of evidence the labour court has exercised the powers under Section-11-A of the I.D.Act and substituted the order of punishment imposed by the disciplinary authority from dismissal to withholding of three increments with permanent future effect and not paying any backwages, the same is not required to be interfered with by this Court in exercise of the powers under Articles 226 and 227 of the Constitution of India. He has further submitted that the Labour Court has rightly exercised the jurisdiction under Section-11-A of the I.D.Act in the facts and circumstances of the case when it is found by the Labour Court that it is not proved that the intention of the respondent workman was to misappropriate the amount. Under the circumstances, it is requested to dismiss the present

special civil application.

5. Heard the learned advocates appearing on behalf of the parties.

6. It is not in dispute that the charge against the respondent workman was of not issuing the tickets to five passengers though the fare was collected. It is required to be noted that before the inquiry officer and even in the disciplinary proceedings, the respondent workman admitted the factum of not issuing tickets to the five passengers though the fare was collected. The Labour Court exercised the powers under Section-11-A of the I.D.Act by considering the fact that out of 51 passengers, 46 passengers were issued tickets and that if the checking squad would not have come, the respondent workman might have issued tickets to those five passengers, is nothing but a perverse observation and consideration made by the Labour Court. It is also an admitted position that though fare from five passengers were collected and the tickets were not issued till the bus was checked by the checking squad. It is also required to

be noted that the tickets are required to be issued to the passengers simultaneously on receipt of the fare and the tickets are not required to be issued subsequently. Under the circumstances, the charge of not issuing the tickets to five passengers though the fare was collected, has been established and proved beyond doubt. Even the Labour Court has held on the basis of admission by the respondent No.2 that the charge of not issuing tickets to five passengers though fare was collected has been proved. Still, the labour court exercised the powers and jurisdiction under Section-11-A of the Industrial Disputes Act. As held by the Hon'ble Supreme Court in case of REGIONAL MANAGER RSRTC V. GHANSHAYM SHARMA reported in (2002) 10 SCC 330 not issuing the tickets to the passenger though the fare was collected is nothing but amounts to misappropriation of amount and the same is very serious misconduct, for which, the order of dismissal is justified. Similar view has been taken in catena of judgments by the Hon'ble Supreme Court and this Court. Under the circumstances, and more particularly, when there is no specific finding given by the Labour Court that the order of punishment

imposed by the disciplinary authority is shockingly disproportionate and / or too harsh, the labour court could not have exercised the powers under Section-11-A of the I.D.Act. The powers under Section-11-A of the I.D.Act can be exercised by the Labour Court only when it is found by the Labour Court that the punishment imposed by the disciplinary authority is shockingly disproportionate and for which a specific finding is required to be assigned by the labour court concerned. In the present case, as stated above, there is no finding given by the Labour Court that the order of dismissal imposed by the disciplinary authority was shockingly disproportionate. Under the circumstances, exercise of the powers by the Labour Court in interfering with the order of punishment imposed by the disciplinary authority exercising the powers under Section-11-A of the I.D.Act can be said to be not judicial exercise by the labour court. Under the circumstances, the judgment and award passed by the Labuor Court, cannot be sustained.

7. For the reasons stated above, the petition

succeeds. The judgment and award passed by the Labour Court, Surat dated 30th July, 2004 passed in Reference No.181 of 2003 is hereby quashed and set aside.

8. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

[M.R.Shah, J.]

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